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City of Huntington v. AmerisourceBergen Drug Corp. et al, 17cv01362 Witness Name: June Howard (DEA- 30(b)(6)) Deposition Date: 4/25/2019 Defendants' Affirmative Designations (w/ Plaintiffs' Objections and Defendants' Replies)		
Designations	Objections	Responses
12:16 - 12:20 12:16 Q. My name is Chris Eppich. I represent 12:17 McKesson in this litigation. 12:18 Would you please state your full name 12:19 for the record. 12:20 A. June Howard.		
13:23 - 14:06 13:23 Q. You understand that you're providing 13:24 testimony on behalf of DEA today? 13:25 A. Yes. 14:01 MR. EPPICH: I'd like to mark as 14:02 Exhibit 1 the amended notice of the deposition 14:03 of Ms. Howard. 14:04 (Howard Deposition Exhibit 1 marked for 14:05 identification and attached to the 14:06 transcript.)		
14:25 - 15:03 14:25 Q. Do you understand it to be the letter 15:01 authorizing your testimony on certain subjects 15:02 on behalf of DEA? 15:03 A. Yes.		
15:11 - 15:19 15:11 Q. If you could turn to page 6 and 15:12 topic 11. Topic 11 states, "Your practice of 15:13 notifying DEA-registered distributors when 15:14 another distributor terminated its relationship 15:15 with a customer due to the risk of diversion, 15:16 including when and why you disseminated [sic] 15:17 such practice." 15:18 Are you authorized by the DEA to testify 15:19 on this topic today?		
15:23 - 15:23 15:23 THE WITNESS: Yes.		
15:25 - 16:02 15:25 Q. And you're prepared to testify on this 16:01 topic here today? 16:02 A. Yes.		
17:24 - 18:08 17:24 Q. Now, you're currently the chief of the 17:25 reports analyst group unit -- or excuse me, 18:01 chief of the reports analyst unit; is that 18:02 correct? 18:03 A. Reports analysis unit. 18:04 Q. Thank you. 18:05 And is that -- is that a new -- is that 18:06 the same as the chief of the targeting and 18:07 analysis unit? 18:08 A. Yes.		

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19:10 - 19:13 19:10 Q. You were the chief of the targeting and analysis unit from 1996 to 2010; is that correct? 19:11 19:12 19:13 A. Correct.		
22:02 - 22:04 22:02 Q. Did you join the targeting and analysis unit as the chief of that unit in 1996? 22:03 22:04 A. Yes.		
28:17 - 29:01 28:17 Q. Following the first of the distributor briefings in 2005, DEA established an e-mail group to announce actions taken by distributors to either discontinue or limit supply to customers. 28:18 28:19 28:20 28:21 28:22 A. Yes. 28:23 Q. And these termination notices identified customers distributors had discontinued or restricted business with, correct? 28:24 28:25 29:01 A. Correct.	Re: [28:17 to 29:01] Compound; Foundation; Assumes Facts	Re: [28:17 to 29:01] The question is not compound. Ms. Howard was DEA's 30(b)(6) witness on the "practice of notifying DEA-registered distributors when another distributor terminated its relationship with a customer" (see 15:11-19) and had an appropriate foundation of knowledge to answer this question. The question does not assume facts; it asks Ms. Howard to confirm whether certain facts are accurate, which she did.
29:19 - 30:01 29:19 Q. Did the DEA want distributors to make informed decisions about the customers that they signed up to distribute to? 29:20 29:21 29:22 A. Yes. 29:23 Q. DEA understood that distributors trying to identify potential diversion would benefit from access to more information than just their own sales data and customer observations, right? 30:01	Re: [29:19 to 30:01] Speculation (29:23-30:1); Foundation (29:23-30:1); Scope (29:23-30:1)	Re: [29:19 to 30:01] The question does not call for speculation as it asks a DEA 30(b)(6) witness for the DEA's understanding. The question falls within the scope of the 30(b)(6) topic on which Ms. Howard was identified (see 15:11-19), such that she had an adequate foundation to respond.
30:06 - 30:06 30:06 THE WITNESS: Yes.	Re: [30:06 to 30:06] Speculation; Foundation; Scope (witness not designated for this topic)	Re: [30:06 to 30:06] Please see prior response.

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30:08 - 30:11 30:08 Q. And if the distributors knew the name of 30:09 the pharmacies that had been cut off by other 30:10 distributors, it could help them identify 30:11 potential diversion, correct?	Re: [30:08 to 30:11] Speculation; Foundation; Calls for Expert Testimony	Re: [30:08 to 30:11] The question does not call for speculation as it asks a DEA 30(b)(6) witness for the DEA's understanding on a topic for which Ms. Howard was identified as a 30(b)(6) witness (see 15:11-19). The question does not call for expert testimony, as it is asked of the DEA, which is tasked with regulating diversion of controlled substances. Notably, the experts qualified to discuss methods to prevent diversion in this case have been qualified on the basis that they previously worked at the DEA, making the suggestion that the DEA itself lacks sufficient knowledge to respond inaccurate.
30:14 - 30:16 30:14 THE WITNESS: The information is 30:15 limited. They would need more than notification 30:16 of pharmacies that have been cut off.	Re: [30:14 to 30:16] Speculation; Foundation; Calls for Expert Testimony	Re: [30:14 to 30:16] Please see prior response.
31:03 - 31:06 31:03 Q. You would agree that the more 31:04 information the distributor has on the pharmacy, 31:05 the more helpful that would be to prevent 31:06 diversion, correct?	Re: [31:03 to 31:06] Scope (witness not designated for this topic)	Re: [31:03 to 31:06] The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19), which includes questioning about whether the DEA believed the information previously provided was useful to the recipient.
31:10 - 31:10 31:10 THE WITNESS: Yes.	Re: [31:10 to 31:10] Scope (witness not designated for this topic)	Re: [31:10 to 31:10] Please see prior response.
31:12 - 31:14 31:12 Q. Now, DEA considered the termination 31:13 notices to be a valuable lead to identify the 31:14 source -- a source of diversion, right?	Re: [31:12 to 31:14] Vague	Re: [31:12 to 31:14] The question is not vague, and the witness answered the question without issue.

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31:16 - 31:16 31:16 THE WITNESS: Yes.	Re: [31:16 to 31:16] Vague	Re: [31:16 to 31:16] Please see prior response.
34:06 - 34:12 34:06 Would you agree that the DEA knew and 34:07 understood that the vast majority of 34:08 distributors, upon receiving a termination 34:09 notice, they would conduct additional due 34:10 diligence or potentially stop supplying a 34:11 customer that another distributor had 34:12 terminated?	Re: [34:06 to 34:12] Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Vague	Re: [34:06 to 34:12] The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19), which includes questioning about whether the DEA believed the information previously provided was useful to the recipient. The question is not vague or compound. The question does not call for speculation or lack foundation, as it asks a DEA 30(b)(6) witness for the DEA's understanding.
34:15 - 34:15 34:15 THE WITNESS: Yes.	Re: [34:15 to 34:15] Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Vague	Re: [34:15 to 34:15] Please see prior response.
41:23 - 42:01 41:23 Q. Was it DEA's general practice to perform 41:24 any type of investigation into the pharmacies 41:25 and doctors identified in the termination 42:01 notices sent to distributors?	Re: [41:23 to 42:01] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [41:23 to 42:01] The question is not vague, including as to time period which was previously established as beginning in 2005 (see 28:17-29:01). The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19). This topic fairly includes questioning about whether the DEA believed the information about a termination was relevant and warranted further action. The question does not call for speculation, as it asks for the DEA's own actions. The question is directly relevant to the issues of this case, including the DEA's expectations of and information-sharing with distributors.

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42:06 - 42:06 42:06 THE WITNESS: I don't know.	Re: [42:06 to 42:06] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:06 to 42:06] Please see prior response.
42:08 - 42:11 42:08 Q. Was it DEA's general practice to use 42:09 ARCOS to investigate any of the pharmacies and 42:10 doctors identified in the termination notices 42:11 sent to distributors?	Re: [42:08 to 42:11] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:08 to 42:11] Please see prior response.
42:15 - 42:15 42:15 THE WITNESS: I don't know.	Re: [42:15 to 42:15] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:15 to 42:15] Please see prior response.
42:17 - 42:19 42:17 Q. Was it DEA's general practice to set up 42:18 any monthly monitoring of the pharmacies and 42:19 doctors identified in the termination notices?	Re: [42:17 to 42:19] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:17 to 42:19] Please see prior response.
42:23 - 42:23 42:23 THE WITNESS: I don't know.	Re: [42:23 to 42:23] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:23 to 42:23] Please see prior response.
42:25 - 42:25 42:25 Q. DEA had that capability, didn't it?	Re: [42:25 to 42:25] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:25 to 42:25] Please see prior response.
43:04 - 43:05 43:04 THE WITNESS: Can you repeat? The 43:05 capability to do what?	Re: [43:04 to 43:05] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [43:04 to 43:05] Please see prior response.

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43:07 - 43:09 43:07 Q. The capability to set up a monthly 43:08 monitoring of the pharmacies and doctors that 43:09 were identified in these termination notices.	Re: [43:07 to 43:09] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [43:07 to 43:09] Please see prior response.
43:11 - 43:12 43:11 THE WITNESS: We had the capability. 43:12 Yes.	Re: [43:11 to 43:12] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [43:11 to 43:12] Please see prior response.
43:14 - 43:19 43:14 Q. And in 2006, while you were the chief of 43:15 the targeting and analysis group, sitting here 43:16 today, you're not aware of any investigation or 43:17 use of ARCO data or monthly monitoring of the 43:18 pharmacies and doctors that were identified in 43:19 the termination notices; is that correct?	Re: [43:14 to 43:19] Relevance; Scope (witness not designated for this topic); Argumentative; Compound	Re: [43:14 to 43:19] The question is not argumentative or compound. The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why "the DEA stopped providing that information (see 15:11-19). This topic includes questioning about whether the DEA believed the information about a termination was relevant and warranted further action. The question is directly relevant to the issues of this case, including
43:24 - 43:24 43:24 THE WITNESS: That's correct.	Re: [43:24 to 43:24] Relevance; Scope (witness not designated for this topic); Argumentative; Compound	Re: [43:24 to 43:24] Please see prior response.

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44:23 - 44:25 44:23 Q. Would you agree that ARCOS data would have been helpful to distributors to identify potential diversion? 44:24 44:25	Re: [44:23 to 44:25] Speculation; Scope (witness not designated for this topic); Calls for Expert Opinion; Vague	Re: [44:23 to 44:25] The question does not call for speculation or expert opinion, as it asks for the personal knowledge of the DEA's Chief of the Targeting and Analysis Group (see 17:24-18:8), which analyzes ARCOS data. Notably, the experts qualified in this case to opine on methods to prevent diversion were qualified based on their experience at the DEA. The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19), which includes questioning about the relevance of different DEA data sources. At minimum however the question and answer can be considered in Ms. Howard's personal capacity, given her senior DEA role.
45:04 - 45:04 45:04 THE WITNESS: Yes.	Re: [45:04 to 45:04] Speculation; Scope (witness not designated for this topic); Calls for Expert Opinion; Vague	Re: [45:04 to 45:04] Please see prior response.
45:06 - 45:13 45:06 Q. Now, DEA stopped sending termination notices to distributors, correct? 45:07 45:08 A. Correct. 45:09 Q. And do you know when the DEA stopped sending termination notices to distributors? 45:10 45:11 A. Based on the DEA records that I reviewed, it appears that it ceased in 45:12 December 2007. 45:13		
47:02 - 48:03 47:02 Q. Why did DEA stop sending the termination notices to distributors? 47:03 47:04 A. Based on my review of the DEA records, it appears the notification process ceased 47:05 because diversion investigators in the field 47:06 expressed concern about the notification, and 47:07 individuals on the listing were legitimate 47:08 pharmacies or doctors and needed their product 47:09 for legitimate medical purposes. 47:10 Also, the threat of potential 47:11 litigation. And -- that's it for now, if I 47:12 can -- yeah. 47:13 Q. And what were the concerns of the 47:14 diversion investigators? 47:15 A. That registrants that were identified 47:16 had legitimate purposes for ordering product and 47:17	Re: [47:02 to 48:03] Hearsay; Speculation	Re: [47:02 to 48:03] The statements referenced in Ms. Howard's testimony are not hearsay because they are not offered for the truth, but for effect on the listener in relation to why the DEA chose to stop sharing information about terminating sales to pharmacies with distributors. The question and answer does not call for speculation, as Ms. Howard is a designated 30(b)(6) witness on this topic (15:11-19) and had the

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47:18 they should not be blacklisted. 47:19 Q. And you mentioned the threat of potential litigation. Did I hear that correctly? 47:20 A. That's correct. 47:21 Q. What was the threat of potential litigation that you mentioned? 47:22 A. In my review of some of the DEA records, Kyle Wright mentioned that once the notification termination memos were distributed, pharmacies and DEA registrants threatened to sue him. 48:01 48:02 48:03		requisite knowledge to answer this question on behalf of the DEA in light of her review of records and position as the Chief of the Targeting and Analysis unit.
49:02 - 49:05 49:02 Q. Was the threat of litigation, was that threat too scary for the DEA so that it decided it would stop sending the termination notices to distributors? 49:03 49:04 49:05	Re: [49:02 to 49:05] Argumentative; Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [49:02 to 49:05] The question is not argumentative, vague, or compound, and it does not call for a legal conclusion. The question seeks factual knowledge regarding why the DEA took an action.
49:08 - 49:09 49:08 THE WITNESS: I believe it contributed to ceasing sending out the notifications. 49:09	Re: [49:08 to 49:09] Argumentative; Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [49:08 to 49:09] Please see prior response.
50:12 - 50:16 50:12 Q. The DEA -- Ms. Howard, did the DEA stop sending distribution notices after hearing concerns about the threat of litigation against the DEA from pharmacies and doctors that were identified in the termination notices? 50:13 50:14 50:15 50:16	Re: [50:12 to 50:16] Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [50:12 to 50:16] The question is not vague or compound, and it does not call for a legal conclusion. The question seeks factual knowledge regarding why the DEA took an action.
50:19 - 50:21 50:19 THE WITNESS: That was one of the reasons. It appears that they ceased sending the notifications. 50:20 50:21	Re: [50:19 to 50:21] Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [50:19 to 50:21] Please see prior response.